

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE
IN ADMIRALTY**

CATHERINE A. McGUIRE,

Plaintiff

-vs.-

**DELAWARE RIVER & BAY
AUTHORITY,**

Defendant.

**C.A. No. 06 - 640
JURY TRIAL
DEMANDED**

VERIFIED COMPLAINT

Comes now, the Plaintiff, CATHERINE A. McGUIRE, by and through her attorney, PETER E. HESS, Esq. and allege and aver as follows:

1) This is a case of admiralty and maritime jurisdiction, as hereinafter more fully appears, and is an admiralty or maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure.

2) This is an action for personal injuries occurring onboard a commercial ferry vessel while engaged in maritime commerce on the navigable water of the United States and within the territorial waters of the State of Delaware. It is brought pursuant to the admiralty jurisdiction of the United States District Court as set forth in Article III of the U.S. Constitution.

I. The Parties

3) Catherine A. ("Cathy") McGuire (hereinafter, "McGuire"), d.o.b. September 6, 1944, is a domicile of the State of New Jersey whose residence is at 278A Milford Lane, Monroe Township, New Jersey 08831.

4) The Delaware River & Bay Authority ("DRBA") is an interstate agency created pursuant to the laws of the States of Delaware and New Jersey, with its headquarters at the Administrative Building adjacent to the Delaware Memorial Bridge, New Castle Ave. at the intersection of Route 9 and Interstate 295, P.O. Box 71, New Castle, New Castle County, Delaware 19720.

II. The Facts

5) On October 17, 2004, Cathy McGuire was a paying passenger onboard the DRBA ferry vessel *CAPE HENLOPEN*, carrying vehicular and pedestrian traffic between Lewes, Delaware and Cape May, New Jersey.

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U.S. DISTRICT COURT
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6) As the ferry approached its terminal in Lewes, Delaware, an announcement was made to car passengers to return to their vehicles in preparation for disembarking. As McGuire was approaching her car, suddenly and without warning, the ferry forcefully struck the pilings aligning the ferry landing with sufficient violence that McGuire was thrown off her feet and onto the metal decking of the vessel.

7) Clutching for a hand railing that did not exist, McGuire's body landed violently on the deck, her cheek striking a steel retaining bar approximately six inches off the deck. The steel bar which separates the vehicular parking area from the bulkheads surrounding the ferry's stairwell.

8) McGuire sustained severe facial lacerations, contusions, hematomas and a fractured left zygomatic arch. She also sustained bruising and severe pain along the length of the left side of her ribcage. A crew member brought her ice, took a report and summoned an ambulance.

9) McGuire was treated at the Beebe Hospital Emergency Room in Lewes, DE and later discharged to the treatment of her own physicians in New Jersey.

10) McGuire underwent conservative treatment for several months which included periodic monitoring of the healing of her facial bones and ribcage.

11) McGuire's face was severely bruised and disfigured for several months. She sustained permanent damage to her face and the bone structure thereunder, including numbness and a lack of any sensation to the portion of her cheek which impacted the steel rail. There is permanent disfigurement where the fracture healed and McGuire's face remains sensitive to the touch and acutely susceptible to cold and humidity.

III. Negligence

12) The Plaintiffs incorporate and re-allege allegations 1) - 11).

13) This is an action for negligence.

14) DRBA, as a common carrier, owes a duty of due care to its passengers, a class of persons to who the Plaintiff McGuire belongs.

15) DRBA breached its duty of due care to McGuire in the following manner:

a) by failing to adequately warn its passengers of the impending impact with the wooden pilings; and,

b) by failing to exercise due care in the navigation of the ferry vessel so as to avoid forceful impact with the pilings; and,

c) by failing to provide a hand rail for its passengers to arrest their fall in the event of the impact of an allision or collision or in the event of a severe list or rolling of the vessel; and,

d) by other reasons as shall be made evident during the discovery phase of this litigation.

WHEREFOR, Plaintiff McGuire prays for a finding of negligence by DRBA under the general maritime law and for the imposition of a judgment for compensatory and special damages, temporary and permanent disability, disfigurement, pain and suffering, the negligent infliction of emotional distress, humiliation, aggravation, reasonable attorneys fees and the costs of this action, and such other damages as are just and reasonable.

Respectfully submitted,

October 17, 2006

Dated



PETER E. HESS, Esq.

P.O. Box 7753

Wilmington, DE 19803-7753

ph: (302) 690-1715

DE Bar No. 2298

ATTORNEY FOR
PLAINTIFF CATHY MCGUIRE

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS October 17 PM 2:16
Catherine A. McGuire

(b) County of Residence of First Listed Plaintiff Gloucester Co., NJ
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's Firm Name, Address, and Telephone Number Peter E. Hess, Esq. Ph (302) 690-1715
PO Box 7753
Wilmington DE 19803-7753

DEFENDANTS Delaware River + Bay Authority

County of Residence of First Listed Defendant New Castle, DE
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known) 06 - 640

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)

☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input checked="" type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity): U.S. Constitution, Art II Cl. 6 - Admiralty Jurisdiction

Brief description of cause:

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** **CHECK YES only if demanded in complaint:** **JURY DEMAND:** ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY N/A (See instructions): **JUDGE** **DOCKET NUMBER**

DATE October 17, 2006 **SIGNATURE OF ATTORNEY OF RECORD** Peter E. Hess

FOR OFFICE USE ONLY

RECEIPT # **AMOUNT** **APPLYING IFP** **JUDGE** **MAG. JUDGE**

Receipt # 145061 10/17/06
 MAINTNCE ISSUED
 ISI

AO FORM 85 RECEIPT (REV. 9/04)

United States District Court for the District of Delaware

Civil Action No. 06 - 640

ACKNOWLEDGMENT
OF RECEIPT FOR AO FORM 85

**NOTICE OF AVAILABILITY OF A
UNITED STATES MAGISTRATE JUDGE
TO EXERCISE JURISDICTION**

I HEREBY ACKNOWLEDGE RECEIPT OF 2 COPIES OF AO FORM 85.

OCT 17 2006
(Date forms issued)

(Signature of Party or their Representative)

(Printed name of Party or their Representative)

Note: Completed receipt will be filed in the Civil Action